

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

B. JUNE PALMER)	
Claimant)	
VS.)	
)	
DCCCA)	Docket No. 248,202
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent appeals the August 26, 2003 Award of Administrative Law Judge John D. Clark. Claimant was awarded benefits for a 16 percent functional impairment to the body as a whole for injuries suffered on April 1, 1999, and continuing through July 28, 1999. Respondent contends that claimant's award should be limited to a 42 percent impairment of the right thumb, with no impairment for claimant's bilateral carpal tunnel syndrome. Claimant, in the alternative, contends that she is entitled to a body as a whole award, having injured the thumb and, in addition, injured or aggravated her bilateral carpal tunnel syndrome. The Appeals Board (Board) heard oral argument on February 10, 2004.

APPEARANCES

Claimant appeared by her attorney, Orvel B. Mason of Arkansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard J. Liby of Wichita, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant began working for respondent in March of 1999 as a counselor in respondent's therapeutic community, working with inmates. Claimant worked at the Winfield Correctional Facility, which required her to walk up and down steps, as there were no elevators available for use in most of the buildings. On April 1, 1999, while going to her office on the third floor, claimant missed a step, falling forward on the steps and landing on her right hand. She testified she landed on the corner of her thumb and wrist, with immediate stabbing pain in the base of the thumb. She also testified that the pain radiated.

Claimant advised her supervisor, who told her to seek medical care, so she went to the William Newton Memorial Hospital in Winfield, Kansas, where she was examined and treated by her family physician, Alvin D. Bird, D.O. Dr. Bird diagnosed claimant with an increased uptake at the first metacarpal/carpal joint space, indicating possible metacarpal joint space degenerative osteoarthritis. Dr. Bird put claimant in a splint and provided her with pain medication, returning her to work.

Claimant attempted to perform her paperwork with her left hand, but was unable to satisfactorily do so without using her right hand. Claimant performed as many duties with her left hand as possible through July 28, 1999, her last day worked with respondent. Claimant testified that during this time, her left hand began developing symptoms, including aching and tingling, while her right hand also continued to worsen. Claimant terminated her employment with respondent on July 28, 1999, being unable to perform a substantial portion of the responsibilities of the job.

Claimant was referred to board certified orthopedic surgeon James L. Gluck, M.D., first coming under his care on February 17, 2000. At that time, claimant was complaining of numbness on the right side. Dr. Gluck diagnosed a possible carpal tunnel syndrome on the right side. He injected her right thumb CMC joint, placed her in a long opponens splint and restricted her to wearing the splint during the day, although being allowed to take it off several times to work on general motion. He again saw claimant on March 1, 2000, and again diagnosed possible right carpal tunnel syndrome. He next saw claimant on April 6, 2000, at which time she reported a reduction in symptoms. He replaced the cast.

Dr. Gluck next saw her on April 27, 2000, at which time claimant continued experiencing pain. Claimant, on that date, requested that the doctor document in the chart that she was having difficulties in her left hand due to the overuse she was experiencing from being unable to use the right hand. He referred claimant for nerve conduction tests, which were performed bilaterally.

At the next examination on May 11, 2000, claimant was diagnosed with bilateral carpal tunnel syndrome, moderate on the left, mild on the right; and mild left ulnar nerve compression at the elbow. Dr. Gluck did not believe claimant was in need of treatment at that time for the bilateral carpal tunnel syndrome. He also opined that he did not believe the carpal tunnel syndrome was related to claimant's work. The May 11, 2000 examination was Dr. Gluck's last examination of claimant.

Claimant was referred to Dr. Bird for medical management and pain medication. However, very few of Dr. Bird's records are available for review.

Claimant was referred to C. Reiff Brown, M.D., board certified orthopedic surgeon, on September 13, 2000. This referral was at the request of claimant's attorney. Dr. Brown diagnosed claimant with prominence at the base of both thumbs and tenderness over the carpal/metacarpal joints bilaterally, with the right being the more severe. The range of motion of both of claimant's thumbs was severely limited, again with the right being more severe than the left.

Dr. Brown diagnosed claimant with preexisting degenerative arthrosis involving the first carpal/metacarpal joint and an aggravation of claimant's degenerative problems because of her work-related injuries. He rated claimant at 20 percent impairment to the upper extremity as a result her loss of strength, but did not believe claimant to be at maximum medical improvement. He suggested an arthroplasty or fusion of the thumb joint. He also testified the 1999 fall had aggravated claimant's preexisting problems with her thumb.

Claimant was referred to J. Mark Melhorn, M.D., board certified orthopedic surgeon, first seeing him on April 10, 2001. At that time, claimant was diagnosed with carpal tunnel syndrome and pain in the right wrist and thumb. On May 14, 2001, Dr. Melhorn performed a right thumb CMC arthrodesis with bone graft on claimant. He continued treating claimant for some period of time, noting that her carpal tunnel syndrome progressed over the next several months, with increased complaints to both the right and left hands. This increased numbness in her hands and claimant's increased difficulties were associated with claimant's activities.

On April 23, 2001, claimant began working at Miracles House as a counselor for women and children. Claimant acknowledged that while the work was computerized, it

involved substantial amounts of paperwork. Claimant testified she was unable to perform many of the duties, having to hunt and peck on the computer with her left hand. At some point, claimant's cast was reduced to where she could use part of her fingers on her right hand. She was still, however, limited to hunting and pecking with both hands. Claimant worked until July 28, 2001, at Miracles House, at which time she was terminated due to her inability to keep up with the substantial amounts of paperwork.

Claimant returned to Dr. Melhorn for additional treatment, with Dr. Melhorn noting the increased difficulties with claimant's bilateral carpal tunnel syndrome. He performed a right carpal tunnel release on August 29, 2002, and a left carpal tunnel release on September 12, 2002. Dr. Melhorn confirmed that during the sixteen months leading up to the August 13, 2002 examination, claimant's bilateral carpal tunnel syndrome had worsened, but he was unable to say within a reasonable degree of medical probability, meaning a likelihood of 51 percent, that the initial traumatic event caused or permanently aggravated claimant's carpal tunnel conditions. He testified that the activities of an office worker or administrative person with carpal tunnel condition would aggravate these conditions. He also stated that the physical activities that claimant performed after leaving employment would represent a continued contribution to her carpal tunnel syndrome on the right.

Dr. Melhorn was asked on direct examination whether claimant's overcompensation with her left hand during the three years after she left respondent's employment would cause injury. He testified that it was unlikely that would occur. He did, however, acknowledge that compensatory overuse, at times, occurs. He agreed that it was possible that claimant may have suffered traumatic injury to her right carpal tunnel canal at the time of the fall, although her initial complaints were more CMC thumb arthritis and less carpal tunnel. He agreed that the right hand and wrist complaints could also be indicative of carpal tunnel syndrome difficulties. He stated that claimant's risk factor would be slightly greater if she were obligated to perform all of her activities using only her left hand, but would only say that it is possible in that circumstance that the risk would be increased for the development of carpal tunnel syndrome on the left. He acknowledged the more activity she performed with the left hand, the more likely the development of carpal tunnel syndrome would occur. He agreed that by the time claimant had appeared before him for treatment, she had already been diagnosed with bilateral carpal tunnel syndrome by Dr. Gluck from the February 2000 and May 2000 nerve conduction studies. Ultimately, Dr. Melhorn admitted that claimant's bilateral carpal tunnel syndrome had progressively worsened with time.

Dr. Brown examined claimant a second time on March 11, 2002, at which time he diagnosed a fusion of the right thumb. Claimant was complaining of carpal tunnel syndrome on the right, with increased symptoms in her left hand. He felt that claimant's carpal tunnel syndrome had been brought about by the progressive activities since the

April 1, 1999 accident. He also testified that the compensatory overuse on the left hand would be a natural and direct result of the original April 1999 injury to the right. He felt claimant was at maximum medical improvement as of March 11, 2002, unless claimant elected to undergo surgical treatment for her carpal tunnel problems, which she later did.

Dr. Brown next examined claimant on December 11, 2002, after the bilateral carpal tunnel surgeries performed by Dr. Melhorn. He found claimant improved with regard to her nighttime paresthesia, strength and daytime discomfort, but still suffering from a loss of grip strength and some residual tenderness involving the left operative site. He assessed claimant a 16 percent impairment to the body as a whole as a result of the various conditions for which she was treated, including the arthrodesis of the thumb and the bilateral carpal tunnel syndrome. He testified convincingly that there was no doubt in his mind that claimant's right thumb arthrosis was aggravated, accelerated or exacerbated by her fall on April 1, 1999. He went on to state that the bilateral carpal tunnel syndrome was a natural and probable result of that injury to her right hand. He felt claimant had a preexisting carpal tunnel syndrome and that, in a case like hers, it does not take much compromise of the space to put pressure on the nerve and make the carpal tunnel symptoms present themselves. He felt the catalyst was the swelling from the sprain of the wrist on the right.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹

Burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.²

The record conflicts regarding whether claimant's injury on April 1, 1999, affected her bilateral carpal tunnel conditions. Both Dr. Melhorn and Dr. Gluck initially stated that there was no aggravation to the median nerve at the carpal tunnel canals resulting from the injury. However, on cross-examination, both were forced to admit that repetitive use can cause carpal tunnel syndrome or be an aggravating factor. They were also forced to admit that if a person has a compromised function of the median nerve in the non-dominant hand and are then forced to use that non-dominant hand because of abnormalities of the dominant hand, that could increase the chance of developing symptoms in the unaffected, asymptomatic side.

¹ K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

² K.S.A. 1999 Supp. 44-508(g); *see also in re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

Dr. Brown, on the other hand, was consistent in his testimony that the fall of April 1, 1999, caused claimant's initial injury to her right thumb. He also stated that the fall potentially compromised claimant's carpal tunnel canal on the right, causing the additional problems to develop. He went on to state that the compensatory overuse in claimant's left hand, resulting from her inability to use the right hand over extended periods of time, would be a direct and natural result of the initial injury to the right hand.

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.³ The Board acknowledges that where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an intervening cause, it would not be compensable.⁴ However, under these circumstances, the Board finds the medical evidence supports claimant's contention that she suffered an initial injury on April 1, 1999, with aggravations to her bilateral carpal tunnel syndrome as a natural and direct result of that initial injury. The Board, therefore, finds the Award by the Administrative Law Judge granting claimant a 16 percent impairment to the body as a whole for the residuals of the surgical treatments to claimant's right thumb and bilateral carpal tunnel syndrome is appropriate based upon the medical opinion of Dr. Brown.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated August 26, 2003, should be, and is hereby, affirmed in all regards.

IT IS SO ORDERED.

³ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

⁴ *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997); *Bradford v. Boeing Military Airplanes*, 22 Kan. App. 2d 868, 924 P.2d 1263, rev. denied 261 Kan. 1082 (1996).

Dated this ____ day of March 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Orvel B. Mason, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director